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THE SPIRIT OF FREEDOM IN THE LAW

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The most conspicuous service that critical study has rendered to the spiritual appreciation of the Old Testament is the new relief in which it has placed the prophets. Instead of being regarded as mere interpreters of the Law, with the additional gift of insight into the issues of the future, these men now stand forth as the great creative spirits through whom the divine light that shone on Israel broadened toward "the perfect day." The emphasis thus laid on prophecy has naturally tended to a disparagement of the Law. In modern studies of the religion of Israel, this element is often represented as an alien graft upon the nobler stem of free prophetic religion, which was from the beginning hostile to the true genius of prophecy, and in the end actually succeeded in strangling the purer growth—an excrescence whose only real significance was to prepare men, by force of contrast, for something better.

In this there is a certain measure of truth. Prophecy and Law are natural antagonists. The former represents the ideal and progressive element—the living spirit and essence of religion; the latter the formal, traditional, and conservative side—the letter. The aim of Law is to reduce the whole sphere of moral and religious life to rule and order. The native air of prophecy, on the other hand, is freedom. Religious progress consists essentially in the rising of the free spirit of prophecy beyond the rigid fetters the Law seeks to impose. Thus we find the two sides often engaged in bitter conflict. Yet it seems unjust to characterize the Law as an alien growth on the living stem of spiritual religion. The two elements are really complementary. The letter without the spirit is dead. But with equal justice it may be said that the spirit without the letter diffuses itself into insubstantiality, and yields no lasting fruit. From the mutual interaction, and even the struggles and conflicts, of the two sides victory is won, as from the opposition of progressive and conservative forces in political life. The great lines of advance are made by prophetic spirits;

but the fruits of progress are conserved by the Law, which thus raises the plane of national life, and even prepares the platform for a loftier flight of the spirit.¹

The Law ought not, therefore, to be set in irreconcilable opposition to freedom. As an embodiment of the spirit of prophecy, it is rather to be regarded as a legitimate and natural expression of freedom—as literature is of thought. It becomes bondage only when the expression is treated as final, and all further progress of the spirit is barred. So long as Law respects its true vocation as the conservator and consolidator of progress, and remains flexible enough to embrace the results of constantly advancing knowledge and experience, it will prove no stifling prison-house in which the spirit of freedom is slowly but surely starved to death, but rather a spacious home in which the lover of truth and goodness can move with perfect freedom, and in the atmosphere around which he may continue to “mount up with wings as eagles,” and to breathe deeper draughts of the freedom of the sons of God.

It used to be the fashion of enthusiasts for the natural rights of man to point us back to the golden age of the “noble savage”—who was represented as in all things a law to himself—as the halcyon days of freedom. The idea of a primitive “lawless” age, however, has been proved to be the merest figment of the imagination. The life even of the rudest communities is hedged about by a network of rules and conventionalities—social, moral, and ritual—which are as binding in their authority as the most solemnly ordained laws of Israel. Yet it can hardly be maintained by the serious student that these laws impose any undue restraint upon the free spirit of the tribesmen. To the evil-minded, indeed, they act as a wholesome deterrent. But the good and honest find the yoke an easy one. The law seeks not the enslavement of the individual, but simply the highest well-being of the whole. Thus the loyal son of his people, who is content to lose his selfish freedom for the sake of the whole, finds his freedom return to him in a higher and richer form. The

¹ Wellhausen has brought out the fundamental harmony of Law and prophecy with his usual incisiveness: “The prophets and the Law represent no vital contrast, but are identical in their aims, and stand really in the relation of cause and effect” (*Isr. u. Jüd. Gesch. I*, p. 130).

transition from oral to written law imposes no new bondage. The only danger to freedom lies in the undue authority with which the written word is often invested. "What I have written, I have written." Under the influence of such subservience to the letter of the law, obsolete elements have tended to remain wrapped up in the organic structure of law, and thus to hamper the free movement of the spirit of progress. It may however be said that, so long as the ideal remains alive and active, and room is given for its fuller expression, the law continues to keep pace with the spiritual development of the people, and thus affords one of our surest indices to moral and religious progress. While law thus follows the leading of the spirit of progress, it can hardly be regarded as the enemy of freedom, but rather as its loyal friend and champion. Nor can law be held responsible for the decline and fall of the national spirit in such nations as Babylonia, Greece, and Rome—to quote but a few outstanding examples. In all these cases the development of the law simply marks the course the national spirit itself took. When that became corrupt, law also lost its purity, and passed over into lawlessness. And no strong bulwark longer remained to preserve inviolate the freedom of the people.

In general, the growth of Law in Israel obeys the same principles as among all other nations. Here too we have to deal, not with the placing of a rigid, mechanical yoke upon the necks of a hitherto free people, at an advanced stage of its history, but with a gradual development, reaching back to the most primitive times, even before Israel was a nation. The roots of the Law are struck deep in ancient Semitic usage. Its many-sided development on Canaanite soil was fostered and stimulated by the new conditions which inevitably arose from the transition to agricultural life, and at a later stage from Israel's entrance into a larger world through the establishment and expansion of the monarchy. Various elements in the Law appeared, no doubt, as the direct response to these conditions; others take the shape of precedents from judicial rulings of the priests (the original sense of Torah); others again can be traced to Canaanite and, in the last instance, probably to Babylonian influence. But what we have here to emphasize is that the Law of Israel formed no dead *corpus* of multifarious elements, brought together by blind chance, without organic relation to each other. From the beginning, the spirit of Israel—

which was the living Spirit of Jehovah, the God of Israel—moved among the dry bones, instinctively separating out and rejecting all that was incongruous with the purer faith, but attracting, from whatsoever source, that which was worthy, true, and good; exercising a refining, purifying, and humanizing influence over all the elements, and thus building them up together into a harmonious whole. Even before the earliest codes were formulated, we find this spirit at work. Consciously or unconsciously, men governed their conduct by standards like these: such and such a course would be “folly in Israel,” “there hath been no such deed ever done or seen in Israel,” “how can I do this great wickedness, and sin against God?” When bodies of precedent came to be consolidated, and formulated as written laws, the same ideal principle naturally controlled the process. Thus the Law of Israel, at all its different stages, is equally to be regarded as the natural expression of the free spirit of the people, in its endeavor to shape its conduct into more perfect conformity with the unique spiritual principle that lay at the basis of that people’s faith and life. And as such, in its earliest forms at least, the Law was anything but bondage. In Israel, as among other nations, evil men rebelled against restraint. But by the lovers of God and justice, the Law was revered as the safeguard alike of personal and national honor and freedom, and obeyed with willingness, even with joy.

The earliest example of an elaborate code in Israel is found in the “Book of the Covenant” (Exod. 20:22—23:19), which is probably to be dated in the early monarchy, and may thus be accepted as a revelation of how the people who feared Jehovah and sought after “wisdom” regulated their conduct to harmonize with their faith.

It is to be observed that in this early code the stress is laid, not on the strictly religious element of rite and ceremony, but on the simple duties of common, everyday morality. The cultus occupies but the closing verses of the “Book,” and is largely a recapitulation of the ritual Decalogue of Exod., chap. 34. Even here religious duties pass easily over into the sphere of commonplace morality. The keeping of the Sabbath appears, for example, rather as an act of humanity toward the toil-worn servant-maid and stranger, and as an occasion of kindness to the poor ox or ass, than as a token of homage to God

himself (23:12). For the rest, the "Book" shows the old inflexible spirit of Semitic justice yielding to the kindlier feeling that was already subduing the heart of Israel—the reflection of the gracious character of Israel's God. Justice lies at the basis of mercy. And this "Book" is just. It demands justice for all, for the poor as for the rich, for the widow and the fatherless, and for the stranger, who have no strong arm to champion their cause, as impartially as for the great and powerful, who bring their multitudes of clients to overawe the dispensers of justice (23:6-9). The fundamental Semitic principle of blood-revenge is respected—for justice demands that blood should be held sacred—but it is restricted in its application to the exact equivalent, "life for life, eye for eye, tooth for tooth," etc. (21:24), while the unintentional man-slayer is given a chance to escape (21:13). In like manner, such practices as slavery and concubinage are recognized—for the Law can rise no higher than the level set by the highest conscience of the people—but the evils of both are mitigated. The slave has rights as much as his master, and these must be respected. At the end of six years, too, he must be set at liberty; or, if he prefer to remain with his master, he must be treated as a brother in Israel (21:1-6). Even the concubine is entitled to her rights (21:7-11). In this Law, too, property is respected, but the creditor is commanded to be merciful to his debtor. If he receive his neighbor's garment in pledge, he must by all means restore it before sundown, that the poor man may have wherewith to cover himself (22:26). Even an enemy has his rights. If a child of Israel meeteth his enemy's ox or ass going astray, or seeth it lying under its burden, he must not forbear to bring help (23:4 f.).

There is nothing in a simple, natural code like this to make it sit upon the conscience of the people with a weight "heavy as frost." Nor does the picture of the life of the times which we have in contemporary records convey any such idea. No doubt from the beginning there were "fools" who despised God and his laws. But the true children of Israel lived together in unity and friendship, worshiping their common God, and respecting each other's landmarks, and finding a deep satisfying joy in the common moralities of life. Still less were their religious obligations an occasion of gloom and restraint. On the contrary, the festal days when they appeared with their

offerings before Jehovah were the seasons of their most abounding joy. "Then the crowds streamed into the sanctuary from all sides, dressed in their gayest attire, marching joyfully to the sound of music, and bearing with them not only the victims appointed for sacrifice, but store of bread and wine to set forth the feast. The law of the feast was open-handed hospitality; no sacrifice was complete without guests, and portions were freely distributed to rich and poor within the circle of a man's acquaintance. Universal hilarity prevailed, men ate, drank, and were merry together, rejoicing before their God."²

What is more important for our purpose to observe is, that there is nothing in this early Law in any wise inimical to the free development of the prophetic spirit. It is not without significance that the prophets hurled their fieriest bolts of judgment against the practices most severely condemned in the "Book of the Covenant"—the oppression of the stranger, the fatherless and the widow, partiality of justice, and the retaining of garments taken in pledge.³ They had, no doubt, a wider outlook on moral obligation than the authors of the "Covenant;" but this represented the common platform on which they stood, and from which they made their higher ascent. And though their aim was not directly the promulgation of a new code, such was the result of their activities. The preaching of the prophets had infused a new spirit into morality, which demanded a richer expression than the old law had been able to give. The revolutionary effect of Deuteronomy in abolishing the old high places and concentrating the worship of Jehovah in Jerusalem has bulked most largely in history. But this was merely one application of the principle of the book, and was probably dictated more by moral than by strictly religious motives. Deuteronomy is really a revision of the old law from the prophetic standpoint. The bulk of its "statutes and judgments" are repetitions of the old, though often with a new extension, under the influence of the humanistic spirit which breathes through the code. Along with these, however, we have new laws, applicable to new social and moral conditions. The code is, in effect, a serious attempt to keep pace with the moral development of Israel, under the inspiration of

² W. Robertson Smith, *Religion of the Semites*², p. 254.

³ Cf. Amos 2:6 f., 8; 4:1; 5:10 f.; 8:5 f.; Isa. 10:2; 20:21, etc.

prophetic principles.⁴ And it is by no means an external law, seeking to bind down the conscience to practices to which it cannot freely assent. Its first appeal is to the heart. "And these words, which I command thee this day, shall be in thine heart" (6:6; 11:18, etc.). Thus, far more stress is laid on motive than in the earlier law. "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy might" (6:5; 10:12, etc.). Nor is this love, as it has been represented, enjoined upon the people in a hard, stern, loveless fashion. The command to love is shot through with tender reflections on God's unceasing kindness to them, in bringing them from the house of bondage, and shepherding them through the perils of the desert, and giving them and their children this good land, "flowing with milk and honey." The loving-kindness of the Lord may almost be represented as the spiritual theme of the book. The author, or authors, are constantly recalling the goodness of Jehovah, lingering over it, and thus seeking to instil into the hearts of the people a warm deep love to him, which will make them rejoice before him in all they put their hands to, and lend themselves with cheerfulness to do his will (12:7, 18; 16:11, 14, etc.).

Thus the code of Deuteronomy is as little as the older law a yoke of bondage thrust upon the shoulders of an unwilling people. If it proved a failure at the time, this was owing not to the character of the Law in itself, but to the people's perverse idea of what God required of them. Judged by the same test, the prophets' own preaching was a complete failure. The people were still too much wrapped up in their own selfish interests, or given over to the degrading pleasures of their heathenish worship, to turn to God, and serve him in sincerity and truth. It needed the spiritual experiences which came to them as the result of the Babylonian Exile to draw them back to the God of righteousness. But to a people really consecrated to Jehovah, a code like Deuteronomy, with its appeal to the purest motives that could sway the heart, would prove no heavy burden, but a welling fountain of delight.

⁴ "Nowhere more clearly than in the motives of Deuteronomy is the fundamental thought of prophecy expressed, that Jahwe seeks nothing for himself alone, but regards and desires as the true evidence of piety that man should do to man what is right; that his will lies not in the unknown high and far, but in the moral sphere which is known and understood by all" (Wellhausen, *Isr. u. Jüd. Gesch.* p. 131).

Equally unwarranted appears to be the assumption often so confidently expressed that prophets like Jeremiah assumed from the first an attitude of hostility to the law.⁵ It still seems to us most reasonable to find in Jer., chap. 11, a reference to the prophet's youthful activity on behalf of the law. And if afterward he stood aloof from the Deuteronomic movement, it was in no spirit of hostility to the law in itself, but because the people had forgotten the essence of the law, and allowed their enthusiasm for outward reformation to do duty for that loving devotion to Jehovah and brotherly kindness to their fellows in which the law summed up the whole duty of man. That Jeremiah stood in no real antagonism to the law itself seems sufficiently evidenced by the frequent traces of the influence of Deuteronomy which are found throughout his prophecies, as in the "words" of his successors Ezekiel and Deutero-Isaiah. The code being a natural expression of the prophetic spirit, men born of the same spirit were the most able to appreciate its lofty motives, and to carry forward the great work they had equally at heart. Thus, so far from being the death of prophecy, as is frequently asserted, Deuteronomy would appear to have played an important part in preparing for the splendid outburst of prophecy in the immediately succeeding ages.

The real root of opposition between prophets and people lay in the subservience of the moral to the ceremonial elements in religion. The people were for the most part sedulous in their devotion to the rites of worship, while they omitted the "weightier matters of the law"—the moral duties which God required first of all. It was this that called forth the indignant outbursts found in Amos 5:21-27; Isa. 1:10-17, and similar passages. Not that the ceremonial was without significance. Sacrifice was an essential part of ancient religion. It represented the mystical side, through which the worshiper approached the living God, and maintained his relation of intimate fellowship with Him. But to prophetic spirits this was worthless without its natural fruits in moral conduct. As we have observed, the "Book of the Covenant" pays relatively little attention to the

⁵ Thus Marti represents Jeremiah as having looked upon the new phase inaugurated by Deuteronomy as "a hindrance to the true knowledge and worship of God, not an advance toward the nearer fulfilment of the prophetic ideal" (*Gesch. der Isr. Rel.*, p. 196).

ceremonial. It prescribes but a few simple rules regarding the observance of the Sabbath and the three festal days on which the early Hebrews appeared before their God. The code of Deuteronomy represents a more fully developed ritual. But here too the moral side predominates. Even the radical changes which this code inaugurates in worship are dictated chiefly by considerations of morality. It was only when the continuity of Israel's history was broken by the Exile that the ritual element came into full prominence in the Law. Israel had lost all but its faith. To conserve that, Ezekiel and his coadjutors felt themselves called to build up the people as no longer a kingdom, but a community of worshiping servants of Jehovah. To this end, the ordinances of worship must be carefully regulated and prescribed. The first steps in this direction were taken by Ezekiel himself in his epoch-making vision of the New Jerusalem (chaps. 40-48). The original draft here drawn up was further elaborated in the "Law of Holiness" (Lev., chaps. 17-26), and still further in the Priestly Code, where the whole details of correct ritual are laid down with a completeness which leaves no loophole of escape, and enjoined with all the sanctity that comes from the express command of Jehovah himself.

To characterize this new and extraordinary development of the religious spirit in Israel as nothing but "a hindrance to the true knowledge and worship of God" seems to indicate a certain lack of real sympathy with the inner movement of religion. As we have seen, the ceremonial element stands for an essential part of early religion—what the ordinary worshiper indeed would have regarded as its most vital side—the direct approach of the worshiper to his God. And what Ezekiel and his priestly successors aimed at was the legitimate development of this side. In their work we have to deal with no arbitrary constructions on a novel basis, but simply with an expansion of the older forms of worship to meet the changed conditions of the time. In many of its elements the Priestly Code is, no doubt, but a reproduction of the time-honored usages of Solomon's Temple, though certain other elements must be regarded as adaptations to the new order. But the authors of the Law appear to have been guided throughout by the true priestly ideal of making the worship of the restored community more worthy of the transcendent majesty and

holiness of God, as well as a more adequate response to the people's quickened consciousness of sin. Thus Paul was able to recognize in the Law a *paedagogus*, or slave-attendant, to bring men to the school of Christ. But it was not merely in this negative sense that the Law led forward to Christ. Though it was now concerned primarily with the ceremonial rites of worship, the moral element was by no means overlooked. The father of legalism, Ezekiel, was likewise the purest exponent among the prophets of the doctrine of personal responsibility, and of the "new heart and spirit" which God is to give his people, that they may worship him in spirit and in truth. The "Law of Holiness" supplements its ritual ordinances by a moral code of singular loftiness and purity, based on the principle which Jesus Christ gave forth as summing up the whole duty of man to man: "Thou shalt love thy neighbor as thyself" (Lev. 19:18). And though the Priestly Code is occupied almost exclusively with details of worship, yet it appears never to have been intended to stand alone, but was bound up with the earlier codes of the "Covenant," Deuteronomy, and the "Law of Holiness." There resulted, no doubt, a compromise, which failed to satisfy logical minds, or bold religious geniuses like Paul. But it saved the Law from being the purely ceremonial prison-house it seems. To the pure in heart, who served their God with sincerity, the Law was so far from being a burden "unable to be borne" that they could sing of it as their chief delight. The later psalms are full of this joy. The good man's "delight is in the law of the Lord" (Ps. 1:2). "More to be desired are they than gold, yea than much fine gold, sweeter also than honey and the honeycomb" (Ps. 19:10). "O how love I thy law! it is my meditation all the day" (Ps. 119:97).⁶ In the keeping of the Law the good man found his true liberty: "I will walk at liberty; for I have sought thy precepts" (Ps. 119:45).

Thus even in its completest form the Law had not the effect of dealing the death-blow to spiritual religion. The efflorescence of legalism is, no doubt, coincident with the waning of prophecy. But

⁶ This delight in the Law has occasioned astonishment to scholars like Smend and Marti, who regard the Law as essentially "bondage," and can only explain these outbursts of joy as "contradictions in Judaism" (cf. Smend, *Alttest. R. Gesch.*, p. 343; Marti, *Gesch. der Isr. Rel.*, pp. 285 f.). Wellhausen sees far more deeply into the heart of Jewish piety (cf. *Isr. u. Jüd. Gesch.* pp. 205 f.).

perhaps other influences had more to do with the latter result than the oppressive bondage of the Law. Prophecy appeared always as the outcome of certain conditions such as the emergence of some great crisis in national affairs, the inner meaning of which it was the prophet's task to interpret. With the disappearance of the old forms of national life, spiritual religion assumed new modes of expression. If prophecy waned, religious poetry burst forth with a glory the brightest ages of the past had never witnessed. Nor does the Law appear to have been in any way hostile to these free movements of the spirit. It was indeed those who gloried most in the Law who made the boldest flights to heavenly planes.

To Christian scholars who have learned in the school of St. Paul, it is natural to characterize the Law, as it has become stereotyped by rabbinic teachers, as a bondage intolerable to the spirit. But the actual testimony of those who have lived under the Law is to the contrary effect. "We have the testimony of a literature extending over about twenty-five centuries, and including all sorts and conditions of men, scholars, poets, mystics, lawyers, casuists, schoolmen, tradesmen, workmen, women, simpletons, who all, from the author of the 119th Psalm to the last pre-Mendelssohnian writer—with a small exception which does not even deserve the name of a vanishing minority—give unanimous evidence in favor of this Law, and of the bliss and happiness of living and dying under it For, as Maimonides points out, the laws of the Torah are not meant as an infliction upon mankind but as "mercy, loving-kindness, and peace."⁷

And yet the "great pathologist of Judaism" was right. The Law had a true part to play in the history of Revelation. It conserved the fruits of the prophets' preaching, and kept enshrined amid all the perils of the period the two spiritual principles on which "hang all the Law and the prophets" (Matt. 22:40, etc.). But it was always an imperfect expression of these principles. Its moral code remained conditioned by the social conditions of Israel, and could not therefore be accepted as the complete law of conduct by any nation that had not grown up with Israel's growth. The ceremonial law equally pointed to something better, of which its rites were but the temporary symbols. Thus the Law contained within itself the potency of a

⁷ Schechter, *Studies in Judaism*, pp. 296 f.

higher life. The most devoted sons of the Law, such as the "rich young ruler" and Saul of Tarsus, who had "kept all these things from their youth up," felt they still lacked something, the loss of which brought them almost to despair. And when the "fulfilment" came in Jesus Christ, the Law had to yield. No doubt, the early disciples could walk with freedom within the old domains of the Law. But when the new religion passed from Jewish soil on its march to the conquest of the world, it had to find a wider horizon. To impose the Jewish law on the Christian religion would, as the great apostle of freedom so clearly perceived, narrow it down to a mere Jewish sect. And in refusing to enter into the higher freedom of Christ, Judaism condemned itself to perpetual sectarianism. Till this time the Law had been a real expression of the religious spirit, and had kept pace with the advance of that spirit. But now it became stereotyped. And though it continues to afford a measure of freedom and delight to the "children of the Law," it could never be other than slavery to those born without the Jewish pale. Nor does it really satisfy the highest aspirations of the children themselves. There may be room within the circle of the Law for scholars and rabbis and commonplace moralists. But, as Montefiore has candidly acknowledged, there is no longer a place in Judaism for the spiritual genius. "Such minds as Philo, Maimonides, Spinoza, receive their inspiration from the foreigner, and the greatest of them all emancipates himself from Judaism and the law even more thoroughly than St. Paul."⁸ There can be no more convincing evidence that the Law of Israel had at last succumbed to the danger of holding to the letter when the spirit has fled. In refusing to give expression to the upward movement of the spirit, the Law became a mere outward husk, in which there is no seed of growth. The spirit of freedom now lives and moves and has its being within the new spiritual organism which, in "fulfilling" the Law, likewise emancipated itself from its bondage.

⁸ Montefiore, *Hibbert Lectures*, p. 545.